

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-213091

DATE: April 25, 1984

MATTER OF: East-West Riggers and Constructors

DIGEST:

1. Where contracting officer's letter notifying protester that proposal is not within competitive range lists major evaluation areas where proposal was deficient without any details of deficiencies, letter did not rise to the specificity required to place offeror on notice of basis for protest.
2. No discussions with offeror were required prior to determining that proposal was not within the competitive range.
3. Protest that contracting agency failed to give preference to woman-owned business is without merit, since solicitation did not provide any preference for woman-owned business.
4. Where solicitation indicated that all technical criteria would be considered and given relative weights, it was proper to base evaluation on overall assessment of all criteria.
5. Downgrading scores for key personnel was proper where offeror did not provide required references or commitments.
6. GAO does not consider protests against small business size under Bid Protest Procedures, since Small Business Administration has conclusive authority to determine matters of small business size status.

East-West Riggers and Constructors (East-West) protests because its proposal for rigging and heavy hauling support services under request for proposals (RFP) No. 9-BB52-62-3-44P, issued by the Lyndon B. Johnson Space Center, National

Aeronautics and Space Administration (NASA), was not included within the competitive range for negotiations of the contract.

We deny the protest.

A NASA source evaluation board evaluated five proposals for consideration for the competitive range. Two firms were determined to be within the competitive range. They received technical evaluation scores of 877 and 841 out of a possible maximum score of 1,000. East-West's technical evaluation score was 491, the lowest technical evaluation score. Also, the cost proposed by East-West was the highest of the proposals received. By letter of August 25, 1983, received by East-West on August 29, 1983, the contracting officer advised East-West that its proposal was not within the competitive range and was eliminated from further consideration because it was weak in management plans, key personnel and the operating plan.

By telephone conversation of August 29, 1983, confirmed by letter of the same date, East-West requested a debriefing from NASA. East-West was not debriefed by NASA until November 21, 1983. By letter received by our Office on September 21, 1983, East-West protested the rejection of its proposal.

The bases of East-West's protest were: (1) the decision to eliminate it from the competition was unilateral and without regard to the fact that East-West is a woman-owned firm; (2) the decision to eliminate its proposal was based on the evaluation findings of less important criteria and not upon the most important technical criterion (technical problem solving); and (3) the resumes of key personnel were evaluated improperly.

The contracting officer contends that the protest should be dismissed as untimely since our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1983), require that protests such as the one we have in the present case be filed within 10 working days from the time the basis of the protest is known and East-West did not file its protest here until 16 working days after receipt of the August 25 letter on which it bases its protest.

While East-West protested as a result of the August 25 letter, that letter only listed the three major evaluation areas where the proposal was deficient without any details of the deficiencies. Therefore, the letter did not rise to the specificity we have required to place an offeror on

notice of the basis for its protest. See Resdel Engineering Corporation, B-191797, June 29, 1978, 78-1 CPD 465. In the circumstances, East-West could have waited to file the protest until after the debriefing. Resdel Engineering Corporation, supra. Accordingly, we do not consider the protest to be untimely.

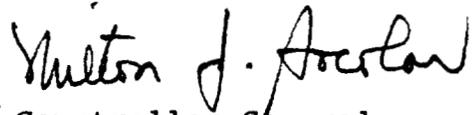
East-West has protested that the decision to eliminate it from the competitive range was unilateral. However, no discussions with East-West were required by NASA prior to determining that the proposal was not within the competitive range. Contract Support Company, B-184845, March 18, 1976, 76-1 CPD 184.

East-West protests that NASA failed to give it a preference as a woman-owned firm is also without merit, since the RFP did not provide any competitive advantage to women-owned firms. Ann S. Peak & Associates, B-208797, May 21, 1983, 83-1 CPD 464.

As to East-West's contention that it was improper to eliminate its proposal based on the evaluation findings of less important technical criteria and not upon the most important technical criterion (technical problem solving), the RFP indicated that all technical criteria from "important" to "most important" would be considered and given relative weights. While East-West rated "fair" on technical problem solving, it rated "unsatisfactory," "poor" and "fair" on other criteria. NASA has indicated that the scores on all the criteria were taken into consideration in the evaluation of East-West's offer. In view of the evaluation scheme in the RFP, we conclude that it was proper to base the evaluation on an overall assessment of all the criteria.

As to East-West's contention that the resumes of key personnel were improperly evaluated, the record shows that East-West's proposal was downgraded in this regard because of omissions in information. The RFP required the offerors to provide the names, addresses or phone numbers of either employee references or customer references so that the experience of proposed key personnel could be validated. Also, the RFP advised that the commitment of key personnel the offeror expects to use on the project would be evaluated and that the failure to have key personnel committed could adversely impact the scores for key personnel. East-West did not provide the required references or commitments. In the circumstances, it was proper to downgrade the scores for key personnel.

After the November 21 debriefing by NASA, East-West protested to our Office that the offeror awarded the small business set-aside contract may not qualify as a small business. Under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine matters of small business size status for procurement purposes. Therefore, our Office does not consider protests against small business size status under our Bid Protest Procedures. Trans World Maintenance, Inc., B-213716, December 14, 1983, 83-2 CPD 691.



Acting Comptroller General
of the United States